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09/723,868	11/28/2000	Daniel Fancuf	FANEUF 00.02	6422
7590	05/12/2004		EXAMINER	
Norman P. Soloway Hayes, Soloway, Hennessey, Grossman & Hage, P.C. 175 Canal Street Manchester, NH 03101			SMITH, KIMBERLY S	
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 20040427

Application Number: 09/723,868

Filing Date: November 28, 2000

Appellant(s): FANEUF, DANIEL

Norman P. Soloway
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/01/2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1, 2, 4, 57, 7, 8, 10-13, 15-17 and 19-22 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) ClaimsAppealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,044,582

Johnson

4-2000

Applicant's Admitted Prior Art ("APA") as disclosed by Figure 1 in the instant application

JP 0369846

Yaman

6-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4, 5, 7, 8, 10-13, 15-17 and 19-22 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 18 (October 10, 2003).

(11) Response to Argument

In response to the Appellant's statement that "the Examiner acknowledges the Johnson clip is quite different from the Appellant's claimed invention", it is respectfully submitted that no such acknowledgement has been made. The Examiner has maintained through the prosecution history that Johnson does not positively disclose the clip design with the exception that the clip is to be held by the lower end portion loop of the rope and that it is adapted for releasably holding a fish. The inventive idea surrounding the Johnson reference is the manner in which a culling rope is created and not to the design of the clip for which the rope is to be applied.

With regards to the Appellant's statement that "the clip taught in APA is a garment hanger." Attention is respectfully drawn to the submitted prior art dating at least as early as 1998, entitled "Plasti-Clip HANG UPS" in which the prior art clip is shown to be sold as an individual item and not in conjunction with the hanging mechanism.

The Appellant states that the garment clip was not just any clip and that it was designed and sold for a specific and single purpose. However, the clip is not a clip attached to a hanger, it

is merely a clip capable of being attached to a hanger. Therefore, anyone with skill in the art would be capable of discerning that a clip, irrespective of prior use, would be expected to function in a manner previously known and that one would have a reasonable expectation of success that the clip would function in that manner, irrespective of what was being clipped. Support for such a statement can be found in the reference to Yaman, JP 0369846 which was cited based upon a known prior art clip positively stated as being capable of hanging clothes, fruits, fish, etc (reference Technological Field of Invention [0001]).

With regards to the Appellant's statement that "Even if a rope were attached, the ability of the rope to increase the gripping force of the garment clip would not be obvious." It is noted that it is the loop (of the length of the rope) that is stated to be "capable" of exerting a force...thereby increasing the gripping force. This limitation holds true for any instance in which a rope is attached to a holding member (i.e. any known clip) due to the fact that as the rope is raised, the gravitational force acting in the direction opposite from the rope due to the weight of the item being clipped is increased and thereby the gripping force required to maintain the object within the clip increases.

In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). As Johnson teaches the attachment of a rope onto a clipping

structure for culling fish and that the APA was known to the public and therefore within the purview of one having a level of ordinary skill in the art, it is respectfully submitted that hindsight reasoning was not applied. Attention is again drawn to the Yaman reference, while not cited as a 103(a) reference, it does provide basis for what was known at the time the invention was made, that being, a clip of a singular design is capable of holding clothes and fish.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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kss
May 10, 2004

Conferees

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